

Chander Singh and ors Vs. State of Raj. and anr

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Court : Rajasthan Jodhpur

Decided On : Jul-08-2014

Appellant : Chander Singh and ors

Respondent : State of Raj. and anr

Judgement :

SBCWP No.4486/2014 Chander Singh & ors v.

State of Raj.

& ors 1/15 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ::

ORDER

PETITIONERS : RESPONDENTS : Chander Singh & others v.

State of Rajasthan & others S.B.CIVIL WRIT PETITION NO.4486 OF2014:: Date of Order : 08 t h July 2014 :: PRESENT HON'BLE DR.JUSTICE VINEET KOTHARI Mr Kailash Jangid for Mr Mahaveer Singh, for the petitioners REPORTABLE BY THE COURT : The petitioners were selected by the Rajasthan Public Service Commission for appointment to the post of Physical Training Instructor (P.T.I.) Grade-II in pursuance of the Advertisement issued by the respondent-State and upon being selected, they were offered such appointment vide Annx.1 dated 27 t h June 2013.

2.Illustratively, petitioner No.1- Chander Singh s/o Gulab Singh was posted at Government Senior Secondary School, Kalyanpur, District- Barmer vide serial No.5 of the list appended to order Annx.1.

He filed a representation SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 2/15 seeking transfer and posting in Jodhpur District, being resident of Jodhpur and in an earlier Writ Petition filed by the petitioner No.1 Chander Singh, namely- SBCWP No.12322/2013, while disposing of that writ petition a Co.ordinate Bench of this Court relegated the petitioner back to the Department by way of suitable representation to be made before the Director, Secondary Education, Bikaner; expecting said Director to decide such representation in accordance with law within a period of one month.

3.The said representation filed by the petitioner came to be rejected by the Deputy Director (Secondary Education).Jodhpur by presently impugned order Annx.10 dated 23rd May 2014 by a detailed and speaking order and being aggrieved by the same, the petitioner has again approached this Court by the present Writ Petition assailing aforesaid order.

4.Mr Kailash Jangid, learned counsel appearing for the petitioners.submitted that the petitioner stood higher in merit in the said selection of P.T.I.Gr-II teachers and he was entitled to be posted at the place of his preference and since persons lower in the merit were so transferred to the place of their choice, the petitioner's representation has been wrongly rejected and therefore, said order deserves to be quashed.

5.Mr Kailash Jangid heavily relied on a decision of this Court in the case of Monika Meel v.

the Dy.

Director, Secondary Education, Jaipur decided at Jaipur Bench on SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 3/15 03 r d October 2012 in SBCWP No.15668/2012, in which the learned Single Judge directed that the posting to the Teachers Grade-II should be as per the preference given by the candidate subject to their merit, thereby meritorious candidates would be having better choice of posting in comparison to less meritorious candidates.

The learned Single Judge observed that this was to avoid any controverRs.of postings and litigations in that regard.

6.Upon a specific query of the Court to the learned counsel of petitioners Mr Kailash Jangid about the applicable statutory guidelines for such transfers and postings, on the basis of which such preference could be given to the persons on the basis of their merit in the said selection process, the learned counsel for the petitioners was unable to produce any such guideline for the perusal of the Court.

He, however, relied on an order dated 03r d August 2012 issued by Gramin Vikas and Panchayati Raj Department of the Government of Rajasthan, which under its clause 3 stipulates that selected teachers for respective districts will be given the postings in the same Panchayat Samiti as far as possible, according to their merit, where they reside.

The relevant portion of said order of the Panchayati Raj Department dated 03 r d August 2012 is quoted below for ready reference: - - ! \$ % SBCWP No.4486/2014 Chander Singh & ors v.

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A 5 \$ > \$ " 7. The very assumption, on the basis of which the judgment in the case of Monika Meel (supra), which is said to have been followed in various other orders as stated by the learned counsel for the petitioners, as narrated in para 1 of the said judgment, was as under: Short controversies involved in these writ petitions is regarding postings of the candidates selected and appointed on the post of Teacher Grade II.

Petitioners have been ignored for preference ignoring their merits despite asking for preference of postings.

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8. The contention of the learned counsel for the petitioner in that case is given in paras 1 and 2: Learned counsel appearing for the respondents submits that the postings would be given to the candidates as per their merit and preference.

The exception would be in the SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 5/15 case of disabled, divorcee, widow and single female.

Those four categories would be given preference in postings irrespective of their merit position however, if any, issue of preference in four categories mentioned above comes, preference would be as per merit amongst them.

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9. On the basis of aforesaid assumption of there being a prescribed preference for posting on the basis of merit, that selected candidates of Teacher Grade-II were asked to give their preference for their posting although there was no such document available before the Court nor any such document has been produced even before this Court while hearing this writ petition; the learned Single Judge in MONICA MEEL's case (supra) held as follows: In view of the submissions of the counsel for the respondents and satisfaction shown by the petitioners, these writ

petitions are disposed of with a direction to the respondents that postings of Teacher Gr.II should be given as per the preference given by the candidates subject to their merits, thereby meritorious candidates would be having better choice of postings in comparison to less meritorious candidates.

The exception of the aforesaid would be for disabled, divorcee, widows and single female.

However, in case of preference between these four categories, meritorious candidate would get preference in postings.

This order would not only apply to these petitions but would be followed for entire State.

This is to avoid any controverRs.of postings and litigations in that regard.

Thus, State Government is SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 6/15 expected to regulate the postings as directed above.

With the aforesaid, the writ petitions and the stay applications are allowed.

Sd/- (M.N.Bhandari),J.

10.The learned counsel for the petitioneRs.Mr Kailash Jangid submitted that since in the earlier writ petition filed by the present petitioner Chander Singh (SBCWP No.12322/2013).the learned Single Judge directed the Director of the Secondary Education, Bikaner to decide the representation of the petitioner and therefore, instead of giving the posting at the place of preference of the petitioner i.e.in Jodhpur District, the Deputy Director, Secondary Education, Jodhpur has rejected the representation of the petitioner by the impugned order dated 03 r d May 2014 Annx.10.

In other words, he submitted that in other orders of the coordinate Benches, where the judgment in the case of Monika Meel's case (supra) has been referred and relied; the respondents are said to have given the desired place of posting to petitioners as per their merit in compliance with such orders passed by this Court.

He cited another order of a coordinate Bench of this Court, passed in SBCWP No.14589/2013- Sachin Ojha v.

State of Rajasthan & others decided on 18th December 2013.

11. The reasons assigned by the respondent-Deputy Director in the impugned order rejecting the petitioner's SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 7/15 representation are also worth noticing.

The relevant extract of the impugned order Annex.10 dated 23rd May 2014 is quoted below for ready reference: E 5 A % E A 8 27.01.2014, E E 8 \$ > 27.06.2013 > 8 % \$ 45 L E \$ \$ / % > L II 8 5 SA 8 5 ! ! A E 8 \$ > 27.06.2013 5 E > E E 5 U \$ 45 \$ % > \$ 45 L % \$ 45 \$ \$ % 4 E : 5 5 A % % \$ 45 \$ \$ > E .

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& ors 9/15 > E \$ 45 \$ % \$ > 1 : E 5 30.01.2014 \$ \$ 1 sd/- () \$ 45 " 12.I have heard the learned counsel for the petitioners at length and perused the relevant orders cited before this Court and have considered the averments made in the writ petition and the reasons assigned in the impugned order.

13.This Court is unable to countenance the spate of litigation and filing of such writ petitions against the administrative orders like orders of transfers and postings on the basis of merit in the selection process.

Firstly, no such guidelines worth the name have been produced by the petitioners for giving the postings on the basis of their merit in the selection process for appointment on the posts of Physical Training Instructor (PTI) Grade-II.

14.The sheet-anchor of the contention of the petitioners.counsel Mr Kailash Jangid based on the judgment of coordinate Bench in the case of Monika Meel's case (supra) is also misplaced.

The very assumption or basis taken in the case of Monika Meel's case (supra) is not even available on the basis of any document making such criteria for giving postings on the basis of merit and therefore, the said judgment appears to be per incurium.

The settled legal position in this regard is that the transfers and postings are purely administrative matters SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 10/15 and can be interfered with in a judicial scrutiny only on the limited grounds viz.

breach of statutory rules and regulations or established mala fides in passing of the impugned orders.None of such grounds are either pleaded, or much less established in the present case.

The guidelines issued by the Panchayati Raj Department in the order dated 03 r d August 2012 are per se not applicable to the present petitioners.who are appointed as Physical Training Instruct ORS.in the regular selection process

undertaken by the Rajasthan Public Service Commission, for their appointment in the Education Department of the State of Rajasthan.

The appointment and selection process of the Panchayati Raj Department, even for Teachers and P.T.Is., is in different perspective altogether and to encourage the local employment of persons of the same area, it could have been stipulated in the order dated 03rd August 2012 so that as far as possible residents of the same Panchayat Samiti could be given the postings in the same Panchayat Samiti, subject to their merit.

These guidelines, ipso facto or otherwise, can not be made applicable to the present petitioners who are not admittedly selected and appointed in the Panchayati Raj Department of the Government of Rajasthan.

The observations and directions of the coordinate Bench in the case of Monika Meel's case (supra), based on the aforesaid assumption of any such available statutory guidelines, is found to be without any basis and therefore, SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 11/15 the same can not be invoked by the petitioners herein.

15. On the contrary, the reasons assigned by the learned Deputy Director of Secondary Education, Jodhpur in the impugned order Annx.10 dated 23rd May 2014 are found to be perfectly just, legal and proper reasons.

The petitioner has been given posting at Kalyanpur in District- Barmer, which is hardly at a distance of 60 kms from main city of Jodhpur, in which District the petitioner has sought his posting, purportedly on the basis of his higher merit in the present case.

16. The cases of this nature have flooded the dockets of the Court in past few years and a casual interference in such matters can create a chaotic situation, as apparently it has done.

Writ petitions after writ petitions in a sequence and chain of litigation are filed by the same petitioners and under the threat of purported non-compliance of the orders and contempt petitions, the authorities of the department are cajoled to buckle under the pressure and give them the posting at the place of their choice.

This is an absolutely untenable situation.

17. The insistence of the petitioners on their posting at the place of their choice, can not be appreciated much less countenanced and supported through invoking of the judicial process of this Court.

To say the least, it is a gross abuse of this Court's jurisdiction under Article 226 of the Constitution of India in such cases.

Even if there were to be some guidelines of the State Government to give them SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 12/15 the posting at a place of preference to such persons, selected on State level, though there are none as indicated above; the same could not have been countenanced by this Court.

In the growing rate of unemployment where even the selection and appointments being secured after a tough selection process with huge competition, if even the place of posting was to be made subject matter of judicial review under Article 226 of the Constitution, nothing more uncalled for interference of this Court in such matters could be illustrated.

18. The present case itself is a glaring example of the rounds of litigations made for such purposes.

FIRs of the writ petitions of the present petitioners came, seeking innocuous direction from this Court for deciding their representations, which came to be issued on 27th January 2014 while disposing SBCWP No.12322/2013- Chander Singh and others v.

State of Rajasthan and others by the coordinate Bench.

Under this order, when representation has been decided and rejected by a well-reasoned order of the Deputy Director, the petitioners are still not satisfied and have again filed the present writ petition, with the prayer of quashing of the said impugned order Annx.10 dated 23 r d May 2014 and seeking a mandamus direction to the respondents, to grant petitioners the posting in Jodhpur District instead of Districts of Barmer and Jalore.

19.Attention of the Court was also drawn towards the guidelines issued by the respondent-State, Department of SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 13/15 Education for transfers and postings of Teachers other than Panchayti Raj Department vide Annx.6 dated 01s t June 2013.

The same, to the relevant extent, are also quoted below for ready reference: " \$ S (5 -2) : .

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& ors 14/15 () \$ 8 2 8 4 SA8 > 5 :- () 4 \$ % 8 \$ 31 , 2013 10 8 SA8 > 1, \$ % A () A % 8 S8 \$:- (A S 8 : \$ -\$ % [/SA 8 : !>) 4 / / \$ \$ /E \$ (- S / E \$ 5 8 A 5 [E \$ L 1 E 5

, E \$ 8 \$8 > 5 , E) E , E E > A E E L s\$ A E 5 " 20. A bare reading of the said guidelines would show that the teachers in the category in which present petitioners fall, were not even liable to be transferred for a period of 10 years. If they are appointed and posted in 10 specified districts, which learned counsel for the petitioners chose to call dark zone. Transfer of a teachers from these districts is not possible, unless and until he completes 10 years service in that particular district and it is prohibited.

The said 10 districts are Sirohi, Jalore, Pratapgarh, Baran, Barmer, Jaisalmer, Bikaner, Jhalawar, Banswara and Dungarpur.

These are apparently less developed and SBCWP No.4486/2014 Chander Singh & ors v.

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& ors 15/15 backward areas of the State of Rajasthan.

In order to maintain equilibrium of number of teachers at all places such a stipulation is provided.

The present petitioners are posted in District Barmer and have sought posting at particular place out of the District of Barmer and this is what is the reason has been assigned by the learned Deputy Director, that to maintain the equilibrium and balance of strength of teachers. The petitioners can not be transferred out of the said District on the basis of their merit of the petitioners in said selection process.

21. This Court is unable to find any fault with the reasons assigned by the learned Deputy Director in the said order and the rejection of the representation of the petitioner was absolutely justified.

The reliance placed by the learned counsel for the petitioners on the judgment in the case of Monika Meel's case (supra) is not only baseless but also misconceived.

The said contention is, therefore, not acceptable and is liable to be rejected and the same is accordingly rejected.

22.The writ petition, thus, found to be devoid of merit.

The same is, therefore, dismissed.

No costs.

Copy of this order be sent to the respondents forthwith.

[DR VINEET KOTHARI].,J.

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